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A SECOND VINDICATION OF THE Magistracy and Government OF ENGLAND,

By way of ANSWER to the several REPLIES, &c.

IT is very observable, that since the late Revolution, nothing hath more disturbed our Peace than the Liberty of the Press: and amongst all our new Prints, the most malignant and mischievous Libels on the present Government have been written by those Lawyers who pretend themselves the greatest Zealots for its Honor and Service; which may be suspected as false, unless it be withal considered, that some modern Royallists have nothing commendatory of themselves but the miscarriages of others; and others of them have such great ones, of their own, that an extenuation or excuse is impossible, and therefore to cloud their own Deficiencies they would blacken other Mens Reputations, and in order to it they have censured Innocence, and arraigned Laws; and where a slip or fault hath been, tho so small as scarcely to deserve the name of one, they have magnified it into an execrable Villany; and for a colour of such their Calumny and Slander, they have vented new Gospel and Law both: nay they have broached such Notions to the World, as are directly fatal to that Crown of which they boast themselves the Makers and Supporters, and yet in doing so they pretend to merit —

It is strange but true, for the Fact is plain, and the Consequence too: upon the present Change, the Republicans of both Gowns, did deem it their Policy and Interest to bespatter and reproach other Mens Actions; and like base and mean spirits, gave ill Names and Words to every thing in which themselves had not been concerned, and made reviling so customary, that it is become the modish sin of the Age. It is most certain the old

English Honor, Frankness, Ingenuity, and good Nature, is quite abandoned from some Companies and Places in the Town, and instead of Folly, we have assumed a vice in our common Conversation, instead of Drollery and Banter, the new fashioned Wit at — 's allows nothing as acceptable but Lying and Slander; nay the very Spark of a Courtier hath changed his note, whereas fulsom, grols, and false Flattery was wont to be his Talent, he is now got to the other extreme, i.e. revengeful, weak, and false Characters, both of Persons and Actions. Which is the worst is difficult to determine, but falsehood is the most predominant humor in both, and that Age is surely unhappy which is plagued with a Surfeit of either, especially when the excess is so great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Protestant, no Lawyer an honest *Englishman*, no Courtier a faithful Servant, unless he can, and do Rail, and Snarl, and Scold, and that at things that were justly used in former times, and must necessarily be used in these times, and will be so in all times whatsoever, even in *Secula Seculorum*. These little winging Animals do value themselves upon their Honesty, because they find Faults, but it is in cases where no Eye can spie them but their own; they value themselves upon their Wit, because their censures are sharp and biting, but that is so easie, so very easie a Province, that Nature teaches even the rudest of her breed to be Satirical, and the Natural oftentimes outdoes the pretended Scholar in Ribaldry, and hath perhaps a better faculty that way for fancy and piquancy of reflection.

Now as the Fact is thus Criminal and Ridiculous both, so must the Consequence prove fatal to the Government which they would be thought (but intend not) to support, for when once resolved to Arraign all past proceedings, they are forced for the maintenance of such their Reflections to vent those Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (save one) been justly exploded as destructive to the honor and being of the then Possessors of the Crown; and can conduce to no other end than the utter Subversion of this, and every other Government that doth but smell of a Monarchy.

It cannot be denied but in most Reigns there have been some occasions given for disquiet to the People, that Kings have born too hard upon their Subjects, that the Subjects have worthily complained of some Warps from the Law; but no Man ever with Sense pretended that this is a reason to induce a belief, that every Act of State, and every Judgment of Law in former times was Arbitrary and unwarrantable: no, surely, the Publishers of such Reflections are of another thought themselves; and some folks imagine, they who formerly were engaged in Seditious Practices against the Crown, would now upon the present occasion explode that Law which doth condemn such Practices, that they may with impunity repeat them whensoever the King or his Ministers shall chance to disoblige them, and that this is the true reason of half the new Libels and invectives upon past Proceedings.

It is now apparent to all Mankind, that every Line, or at least Page, of some Mens Works are designed only as a Courtship to the Mobb, by bridling the Sovereignty, and clipping the Prerogative, even to such a degree, as doth abolutely deprive it of those Rights, Powers, and Authorities, which the ancient Law, continued Usage, and our prelent Representatives consent to allow it.

To check this growing itch of Pamphleting the Nation into another Change, and to vindicate the Rights of the Crown, and justify the Magistracy of *England* from the obloquy which was industriously thrown on it in one Particular: there was three months since, a Sheet Printed and Published, at which some Men took offence, but others were of Opinion, that its Publication was seasonable and well timed; that its reflection on the trifling Defence which it assumed to answer, were just and smooth, and very soft, considering the occasion given for a more Satirical Stile from the fondness and incoherence of the Defenders expressions and inferences, and that the mode of managing his Argument, was modest and tender, with a decent and due regard to the memory of the unfortunate deceased, which had suffered more than enough of Injury by that pretended Justification.

A Choleric and Sedulous Enquiry hath been made after the Authors Name, but the Inquisitor is still at a loss, notwithstanding his confidence of a certain knowledg who it was that came behind and struck him, &c. But to give

him some satisfaction, after all his fatigue in searching, I will ascertain who it was not; he may assure himself that none concerned in that Tryal, were concerned or privy to its Vindication, and when it was Composed and Writ, the Party intended it chiefly for his own and the worlds diversion, from the ungrateful necessity of Reading always on one side, by the interposal of a few Lines on the other; that our Humors might not be quite fownd, and our Genius turn too peevish through the influence of Satyr and Libel, with which the World hath too much abounded of late years; nor had there been one word more published upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the word of a Priest says that it needs one; both shall have an answer presently.

But first it is remarkable, that this new Reply hath got a License, when none of his other elaborate Works could procure one, however it is possible that the Licenser may hereafter renounce, or retract his Allowance in this case, as he hath done in several others already, when his Superiors are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be supposed, that Ministers of State will ever be so incurious of their Masters Honor, and the Rights of his Crown, as to approve their diminution, when once they perceive it.

The single Point which the Advocate for Magistracy assumed to maintain, was that the Indictment in question was Legal and Good, sufficient both for matter and form, and did warrant the Judgment which was pronounced upon the Verdict that affirmed its truth. This seems the principal Assertion in that Paper, which whether his Prefidents and Authorities, Arguments and Reasons, are sufficient to prove, the Reader must judge. That the Cafes he cites are truly reported for so much as he uses them, none can deny, and that the Law is with him upon the whole matter, shall be further evinced.

But since that Sheet hath made some noise amongst angry Men (which was little expected by him that wrote it) it will not I hope be thought impertinent to spend a few Paragraphs upon the boisterous and blustering invectives and remarks made against its Author in a pretended Reply. In his Vindication therefore I shall observe, the Temper, the Wit, the Gueſs, the Reason, the Religion, and lastly the Law of that Replication.

As to the Temper it seems to be writ under some disappointment, for the Author doth in every Sentence declare his Passion, and plainly tells us that he was then discomposed, but whether his displeasure were conceived at a past or present Chief is not so easie to determine: to expoſe his fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Preſumptuous, Base, Ingenerous, Infolent, &c. and all this despised by his reputed Author, and smiled at by the real one. He is pleased to call the Sentence and Execution a plain Murder, which if so, sure I am that he is bound in Conscience to Prosecute an Indictment

Indictment against the Judges, the Recorder, the Grand and the Petit Jury, the Witnesses, the Clerks, the Solicitors, the Gaoler, the Sheriffs, and the Executioner, for they were all concerned either as Accessories, or Principals, and demerit a Halter if the Repliants Opinion be Law; but it is observed amongst *Honest Men* that none of these Parties shew any fear on't, and the reason they give for it is, because the Indictment was as good as their Jurisdiction, and the concurrence of those two make them as safe as an Act of Indemnity can do: at all this was Passion.

As to the Wit on't no: of his Readers are at a loss where to find it, unless it be in his *English* Verses, which do so hit the sense of the Original, and contain such strong and pregnant flights of *English* Poetry, that some of his Readers have compared them even with *Sternhold* and *Hopkins*, and others are of Opinion that they do not come short of the Essays of the two *Grays-Inn* Poets, one of which Translated *Grotius, de Veritate Christianae Religionis*, and the other *Coke* upon *Littleton* into Rhyme, but the generality do declare that for height of Fancy, Propriety of *English*, and exactness of Rhyme he hath much outdone all those: but for my part I believe that last Rhapsody was added not so much for the Ingenuity sake, as to menace the Answerer with a design to Sacrifice him whensoever an occasion should offer it self, and consequently to do what the whole Book complains of; but that Advocate is not so much a Coward as to be afraid on't.

As for the Guess, it is very cunning, and argues more Figure Knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech, or Writing, for he will have the Author of that Sheet, to be the Author of the *Antidote*, though he never saw it till he had the misfortune to have read the *Defence*; and his particular Idioms are as different from those of the *Antidote*, as they are from those of the *Defence*; but this is all guess. He will have it one of the Council of that Tryal, because he hath put *Council* before *Court*: a Cunning Man would have gues'd the contrary, as supposing it done *fallends grata*, for the sake of disguise; but he may be assured it was mere accident that occasioned that fault. He will have it to be the then Solicitor, because of his Reputation, which is supposed to be touched in that *Defence*: but his Readers think that that Gentlemans Figure for Learning, Honor, and Virtue is so far above the reach of a little Pamphlet, that all the virulent Reproaches of the *Reply* cannot Sully it, nor is it in the power of any Tongue or Pen to prejudice his Character in the World; but however it is prudent to suppose to my self an eminent Adversary, that if a Foil be my fortune, it may be the easier.

But since we are at guessing, the World guesses that he who wrote the *Reply*, did write the half Sheet called the *Justification*; and it is really sportive to read the *Justifier*, commanding the *Defender* for a learned worthy Person; and the *Repliant* doing the same good Office for the *Justifier*, and

almost in the same words commanding him: nay he spends an whole Page in the most fulsom praises upon that *Small Bulk* Author, and rejoices that the Work was done to his Hands, which is a very pretty jest. It is at most but *R. for A.* and *A. for R.*, and *R. A.* still, which is much better than the contrary practice, of which some Authors have been guilty.

As to the Reasoning part, the Reader must excuse my brevity, for in truth there is very little in it of that nature: however a few remarks may quicken and revive that faculty against the next turn. The Advocate owns it to be writ in answer to his Defence, *ergo* it Reflects upon the Nations Wisdom. He expresses a refection at my Lord *Russells* engaging in such a weak and Criminal Enterprise, *ergo* he Reflects upon the Nations Justice. He names the Lord *Russel* (though with the most tender Appellations that could be used) *ergo* he Reflects on that Lords memory. He vindicates the Indictment as good, *ergo* he justifies all the Proceedings in that Case. He argues that the Sentence was Legal upon such a Verdict, *ergo* he is against the Reverval. He puts a Case, offers a Point, and makes a Proof on't, *ergo* he is transcendently impudent. These and such like are the inferences, and do demerit a Laugh.

As to Religion I see none in it, unless it be in the mention of the Devilish Powder Plot, which is still as much to the purpose of his *Reply*, as the story of Transmigration of Souls was to that of his *Defence*; only Meekness is transparent in his Stile. Humility in the Title Page, and true Christian Charity in his Menaces of an exception out of the Act of Indemnity which he repeats three or four times at least, as if his whole interest were designed to promote it. The Gentlemans Danger is from publick and scandalous Actions in the Eye of the World: which were (says he) labouring to *Support the Government*, every Man knows what sort; lathing the innocent with a bitter and sharp Tongue, and inveigling of *Juries* with Rhetorical flourishes. Now to examin a little these three monstrous Transgressions, let us go backwards; as to the last, a Duty can never be a Crime, every Servant owes Truth to his Master while such: every Advocate is to do his utmost, and a failure in it had deserved the worst both of Names, and Punishments, which the *Repliant* could invent, or his interest procure. For all Mankind must agree, that the now Servants of the present Crown are obliged to do the like upon the like occasion; if otherwise, the *Jacobites* side will be the sa:est. I will not reflect on the weaknes of the Juries that were thus inveigled; if any such there were, but rather suppose that the Oaths of Witnesses, not the Pleading of Counsel did govern their Consciences. As to the second, that is false, and needs no other answer. As to the first, that Gentlemans Honor and Merit afterwards, is as remarkable as his Fault at first, if it were any; but however he is likely to have abundance of Company, in Desart at least, if not in Censure: for a Duke of Yorks Creature, is certainly as Culpable

as a King James's Servant. And Andrew Marvels Characters in his growth of Popery, will be as true a Directory to decypher Criminals as the four Volumes of noted Tryals. And perhaps if the Ordinance of May 10. 1650. should chance to be revived, danger and fear may seize other Men, as well as those that lately served past Governments; it is therefore thought adviseable for all to sit down quiet, and forgive and forget what is past, but serve God and their Majesties for the future, and not belabour the Excepting one another; for if any shoud be such Fools, the Knaves will get the better on it, and the Righteous scarcely be saved. So much for Religion.

Now for the Law if we can find it, But because the *Defender* seems somewhat displeased at the repetition of that unhappy Lords name, whose Case gives occasion for the present question. Let us there put it like *Mooters*, *John a Styles* was Indicted for that he, at such a time and place, did Compacts to deprive his Natural Lord the King, that then was, of his Regal State, and to destroy his Life, and to Subvert the Government, and raise a Rebellion, and to fulfil that imagination, he, together with others, did then and there consult, and agree to raise a Rebellion against the said King, and to seize and destroy the Guards of the said Kings Person, contrary to, &c. The question was not whether *J. S.* was Guilty? Nor if the Witnesses Swore false? Whether his Attainder were fit to be Reversed? But the dispute was whether that Indictment were Legal? Whether supposing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treason against him, ought to have Arrested such Judgment on the motion of *J. S.* that the Indictment was insufficient? The Sheet argues that the Indictment was good, and consequently the Sentence pursuant thereto was warrantable by the Laws of this Land. The Argument seems founded both upon the Reason of Things, and the Authority of Presidents.

First, The reason alledged was, that the last part, which in Lawyers terms is called an Overt Act, was a natural and genuine Sense or Declaration, or Overt signification of the first part, which is an internal secret Thought, i. e. the Imagination and Compacting, which is the Treason Prohibited and Condemned. That the latter directly and consequently tending, and conducing in the common Sense and Reason of all Mankind (excepting the *Defender*, and two or three more) to the accomplishment of the former, makes a good and sufficient charge within the Stat. Ed. 3. A Repetition is tedious, and an Abridgment is scarcely possible, the whole Sheet being but a Breviate, I shall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the same nature, from which the Legality of this may be justly concluded. The substance of them on the whole matter is, that Overt Acts to Depose the King, or despoil him of his Regal Of-

fice, or take him by Force or strong Hand, or to Imprison his Person, till he yields to the demands of those who practise such endeavours, are sufficient Overt Acts to prove the Compaſſing and Imagination of his Death. That Levyng War, causing an Insurrection, promoting an Invasion, nay that Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motives, and preparations to an Insurrection, or Invasion, though none succeed, have been held Overt Acts of Imagining the Kings Death. I will not repeat the Cases but as occasion offers from the other side.

The Objections there mentioned and answered from the Penning of the Statute, are too trivial to deserve a remembrance, nor would they have ever been thought otherwise, but that *J. S.* was a Noble Person, and the *Defender* a great Man, and the Preciser thought so too, either by himself or others. These and such like ingredients have made some semblance of difficulty: and in truth, had there been a real doubt in the Case, the Author of the *Remarks* on that Tryal, who wanted neither Sense nor Will to Censure it, had his Opinion so inclined, I say he would certainly have fain foul on it in those invidious Observations of his upon the late Times. He quarrels with the Legallity of the Jurors. The *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two first, but agrees with them in the last, that Testimony delivered for fear of Life, or hopes of Pardon, or other Reward, is hardly Creditable; but that is not the Point. Let us see if the *Repli-cation* doth overthrow the Charge as insufficient, and for my part I cannot find a Line of Argument in it, but only it is naught because it is naught. The Consulting, and Concluding to make an Insurrection and Rebellion, and leize the Kings Guards, is not a Declaration of the Parties compassing the King's Deposal or Death, and why? Because Conspiring to Levy War is not a Levyng War, and Levyng War is a distinct Treason; this is the substance of the tenth Page, if I can read: The Sheet said and truly, That Levyng War it self might be alledg'd as an Overt-act of the Compaſſing, and hath been so frequently, and meeting and agreeing to rebel and seize the Guards, hath a direct tendency to promote a Demise of the King either natural or civil, and therefore might as well be alledged an Overt-act as most things whatsoever.

I had almost forgot one Clause, and that is, the unneccesarienes of making 13 Car. 2. if it should be as the Advocate argues; I suppose he means the first Paragraph, for the second is agreed to be introductive of a new Law, &c. but the first is only a Paraphrase upon the 25 Edm. 3. It is thus, That if any Person or Persons whatsoever, shall within the Realm, or without, compass, imagin, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint

of the person of our Sovereign Lord the King, or to deprive or depose him from the style, honour, or kingly name of the imperial Crown of this Realm, or of any other his Majesties Dominions or Countries, or to levy war against his Majesty within this Realm or without, or to move or stir any Foreigner or Strangers with force to invade this Realm, or any other his Majesties Dominions and Countries being under his obedience, and such compassings, imaginings, inventions, devices, or intentions, or any of them shall express, utter, or declare, by any printing, writing, preaching, or malicious advised speaking, being legally convicted thereof, by the Oaths of two lawful and credible Witnesses upon Tryal, or otherwise convicted or attainted by due course of Law; then every such &c. shall, &c. Now what is all this but a confirmation of the old Statute inwards at length; which was agreed to be so in the House of Commons, 1 Jac. 2. when a motion was made to renew that Law, the Lawyers Answere was, that the 25 Edw. 3. did the same thing, and a Man may boldly say it, that here's nothing declar'd Treason, but what had been adjudg'd so before, and Attainders and Executions had purluant to it: The Sheet mentions Cases enough and to the purpose, tho some think otherwise; but I'll not repeat them:

In the 11th page the Reader is referr'd to the justification in the half sheet; and therefore let's examine that a little; a third part of it is spent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication: As to the rest, the force of it, if any, seems only to be founded on his first Assertion, the conspiring to do a thing is not the doing a thing, and he quotes two great Mens Names for it, I would have agreed that, tho he had spar'd the Authority to justify it; but this is sufficiently answered in the Sheet: He offers an Argument from the late Statutes declaring Treasons, because they were temporary, but I answer as the Sheet doth, they were in affirmation of the old Law, and I can shew him three or four temporary, and an hundred other Acts of Parliament that are so, and therefore that is no Argument at all; but I am, as the Party I justify was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for construction of Statutes, that a thing particulariz'd in one part is not to be construed within the general words of another part, but that Rule hath near fourscore Exceptions in the Books; besides, it come not to this Case, for here's compassing the King's Death made Treason, and declar'd by Overt-act then levying War is made Treason: Now lays the Repliant, nothing can be an Overt-act of and conduce to promote and accomplish the first, that doth any ways concern the latter, I say it is a *non sequitur*; for there are several Instances mentioned in the Sheet, which respect the levying War, and yet are a genuine evidence of the intention and compassing; and if so, the Judges who have ruled such Indictments to be good, did neither assume an arbitrary Power, nor transgres any Rule of Law, as the half Sheet insinuates, 1

Then the Lord Cobham's Case is endeavoured to be answer'd, by a Wonder that Sir Edward Coke late Lord Chief Justice and then Sheriff, should differ from Mr. Attorney Coke; for we know his thoughts in Sir Walter Rawleigh's time and his Speeches in Car. I. his time; they are as different each from the other as the times were; and in this particular, that Gentleman hath had more followers than precedents; but the Query is, What is law.

Then Sir Henry Vane's Case is endeavoured to be answered by this, that Syderfin mentions not the Overt-act in the Indictment, but he doth say the Treason alledg'd was a compassing the King's Death, and every Man knows what Sir Hen. Vane did to accomplish that, he neither sign'd the Warrant to execute that Murder, nor was he actually concern'd in it; the Justifier says he does not remember it printed any where but in Syderfin's Reports; for the refreshment of his Memory I'll tell him of another Book where it is, and that's Keble's First Volume of Reports, 304. and there the Indictment is said to be for Compassing the King's Death, and endeavouring to accomplish the Treason by Changing and Usurping the Government, and Levying War, which Case doth directly overthrow all the Defenders, Justifiers and Repliants Arguments from the distinctness or difference of the sort of Treason.

Then for Dr. Story's Case, he says 'tis hard to justify it for Law; whereas there are above forty places in our printed Law Books where 'tis cited and agreed to be Law: Now 'tis pretty odd, that a Case so resolved and so ratified, should one Hundred and eighteen Years after, be arraigned in print, for twas Hill 13. Eliz. if any thing be Law, that is so, and not distinguishable from this Case in question, but that the Evidence was different, which the Justifier would make a reason to invalidate this Indictment; the Logick of it passeth all Understanding; besides, 'tis very observable, that the Benches were fill'd both with Learning and Integrity in 1571. a.d 1662. neither of those times were Tory or Popish; and in Dyer 298. the reason given was, that it could not tend but to the great peril of the King's Person, and therefore an attempt to promote such Invasion, tho none followed, was adjudg'd as aforesaid: In 2. Anderson pl. 2. fo. 5. Grant's Case twas held, that when any person intendeth or contriveth to levy War for a thing which the Queen by her Law or Justice ought or may do in Government as Queen, it's not material whether they intend any hurt to her Person; but if they intend to levy War against the Office and Authority of the Queen, that's enough, and that resolution overthrows the Justifiers Notion, that J. S. his Design was only to defend the Laws, tho the 13 Eliz. also was then in force, it's a good Argument to answer that pretence:

Now I have repeated and observed all the Replication or Justification offered in answer to my Friend's Sheet, the Reader may perhaps expect some new Matter, not so much for confirmation, as to give occasion for a further defence. In Sir Fr. Moor's Rep. fol 621. pl. 849 on the Tryals of the Earls of Essex and Southampton before the then High Steward, th: Justices did there resolve, that when the Queen sent to the Earl of Essex the Keeper of her Great Seal, and others, with a

Command to him to disperse the Persons armed which he had in his House, and to come to her, and he did refuse to do so, and continued the Armour and armed Persons in his House, that this was Treason ; and they did also resolve, that when he went with a Troop of Captains and others from his House to the City of London, and there prayed Aid of the Citizens to assist him in defence of his Life, and to go with him to Court that he might get into the Queen's presence, that he might be sufficiently powerful to remove from her his Enemies who were there attendant, that this was High Treason, because it tended to a Force on the Queen, &c. I make no inference, let the Reader do that ; 'tis plain that an actual mental intention of hurt is not material in the one Case or the other. As the Duke of Norfolk's Case is related by Cambden in his History of Q. Eliz. 163, the Treason which the Duke confessed, was a Plot to seize upon the Tower of London and deliver the Queen of Scots, and that's all,

There's nothing remains in doubt, but the legality or illegality of the King's keeping Guards for the preservation of his Person ; they say the Law takes care of him, and therefore he is to take none of himself, and that the Judges are his Guards, and therefore he needs no other, that Hen. VII. was the first King who had any other. But let us reason a little ; Can it be supposed, that he should be so sacred in his Person, so great in his Power, and of such Authority as to make War or Peace abroad, and raise Forces and suppress them at home, as the Danger or Defence of his Realm should require, and not be able to provide for his own personal Safety *de presenti*, can he only punish by his Judges afterwards, or prohibit by Proclamation before, but not defend himself for the present ? Is it sense to suppose it ? The Kings of England might have, and actually had Soldiers or Guards (call them what you will) even in times of Peace, and long before Hen. VII. as well as continually since ; I may be so bold as to desie any man to shew me the Year, the Month, the Week, or the Day, since the Conquest by William I. that England was without armed Men actual upon Duty in some part or other of the Nation. This Sheet is not intended for a Studied Argument on this Subject ; and perhaps it would be difficult to justify a standing Army as warrantable, when there's no occasion for it ; but to say he can't by force even by force provide for his own personal safety, when he apprehends it in danger, as every English King hath continual reason to do, especially if some Mens Doctrine prevail, it may be modestly affirmed unreasonable : Hath not every Subject power to keep Arms as well as Servants in his House for defence of his Person ? Is not his Mansion called his Castle ? And yet the Law protects him too by Prohibitions *à parte ause* and Punishments *ex parte post* : There are many Tenures in England which oblige to the annual payment of certain Sums towards Soldiers' Wages for Defence of the King and Kingdom ; there are others oblige to the annual finding certain quantities of Grain in kind

for the supplying the King's Castles and Garrisons, as well as Household ; which being annual, do demonstrate the lawfulness of their continuance, even in times of Peace, and their being immemorial do conclude a Common Law right in the Kings of England to have those Occasions, as they do conclude him a right to have them supplied by such like Services : Nay Grand Serjeantry is either by Services of attendance on the King's Person in time of Peace, or for Military Aids, in time of War. The Crown may raise Forces by Commission or of the Militia to suppress Insurrections in case the Civil Power of the Sheriff is not sufficient or ineffectual : The Kings of England have the sole Power and Force of the Nation, Complaints have been in Parliament against Billeting Soldiers contrary to the Will of the Hosts, but never for maintaining a Guard for their own Person at their own charge ; Complaints have been of a Standing Army, but never of a select company for his personal preservation ; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great ; besides, for a competent Power in Arms he always may have occasion, when his Subjects know nothing on't ; 'tis his Province to foresee and prevent as well as suppress and punish domestick Tumults, and the busines of War is separately his Office, and that exclusive of his Subjects any otherwise than as they are bound to obey and fight, or desired to assist with Aids and Subsidies, and for this to avoid a numerous Volume of Citations, I'll name one notable Roll or two, in Parliament. 6. Ric. II. Mem. 9. the manner and way of the prosecution of a War being given in charge to the Commons to advise upon, they answered, that this nec doit nec solvatur appertain al eux mes al Roy, and so they did, 31 Edward III. Parte. prim. n. 1. ¶ 21 Edward III. n. 5. it's true in 5 Edward II. n. 4. Ordinances were made, that the King without the assent of his Barons could not make Wars, but those were repealed and damped. 15 Edw. II. Parl. Rot. m. 13. because prejudicial to the Royal Power of a King, and this is sufficiently affirmed by the Act concerning the Militia in Carol. II. his time. It is well known in what time Bryan Chief Justice said, that if all the Subjects of England should war with the Subjects of another's Kingdom, that this is no War, unless the King denounces it : It suffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himself judges his Person or People to be in danger, or stand in need of them : And that he may, when reaons of State will not admit their publication to the World ; but however some standing Force the Crown ever had and ever will have, tho' not always to such a degree as shall be burdensome or oppressive ; and our old Law Books say that Arms as well as Laws are necessary for the Prince, not only in but against the times of necessity, I mean War or Tumult ; besides in Bratton lib. 3. cap. 3. de Corona, 'tis said, that *crimen lese maijstatis* is the greatest Crime because of the greatness of the Person against whom 'tis committed ; his description of it is, *presumpcio contra personam ipsius Regis* ; then when he particularizes the

the several sorts of Treason, the first which he names is, *Sic quis a suo temerario machinatus sit in (i.e. towards) mortem domini Regis, vel aliquid egerit vel agi procreaverit ad seditionem Domini Regis vel exercitus sui, tunc id quod in voluntate habuerit non perduixerit ad effetum.* I'll make no Inference, there needs no Paraphrase, the words are plain; an Act tending to the destruction of the King's *Hof* is High Treason against his Person; *agere ad seditionem exercitus regis est presumptio contra personam Regis, & presumptio contra personam Regis est crimina lege Majestatis:* Now can Bradton be thought to speak only of Treasons in time of War, *Glanvill. lib. 14. c. 1. crimen lege Majestatis dicitur de seditione Domini Regis vel regni vel exercitus:* and *Fleta lib. 1. c. 20. De seditione exercitus sui:* *& cap. 21.* the same words, *seditionem ejus vel exercitus sui;* this was the sense of the old Law, and is very appositely applicable to the Case in question, as I could easily shew, would my Paper bear it. There is one thing which I had quite forgot, and that is, that the Instrument of Grievances which the Prudence of the present Parliament hath provided, complains of a *Standing Army;* the Answer is easie, 'tis not of *Personal Guards;* and the wise enquiry of the House of Commons into the quantum requisite to maintain such and such Forces during the present occasion, and of the Expences of the Crown in Household, Courts, Guards, &c. afterwards, do plainly shew, that that was not the intended Grievance: Now to sum up what is not answered at all or endeavoured to be so; by the Defender, nothing is said to the reason of the thing, or the necessity and nature of an Overt-act, to the opinion of Coke in the places cited, to the Case of Sir Walter Rawleigh, the Case of the Cardinal, the Case of Mr. Coleman, the Case of Constable, the Case of Owen, the Case of Burton, the Cases of Sparbouke, Awatier, and Heber, the Indictment against Sir William Astley, Germain and Taylor, and Tho. Burdett, Collingbourne, and Colledge, nor to the Opinion of the Judges in the Lord Stafford's Case, as if 'twere all impertinent, but the Reader is Judge if it be so.

Now for the Prefacer, I'll be as short upon him as he was upon my Friend; he said that the Sheet needed a Vindication, and I have given it one, and if this needs an other, I hope the Crown will find some Friend to write a Third; he seems so us'd to the word *Libel,* that he cannot forbear calling it an *infamous one;* he says it has not one true material word in it, I'll remember him of one, that mocking is catching in the Proverb, that is, *A Grumbletonian in the Stirrup generally proves a Tyrant — in the Saddle;* that's enough for him to remember: If he wants any more truth, and that he may not say this hath none in't, Treasons are easier committed than distinguish'd, by some Men especially, and the reason why I say this, is because of his Octavo Preface when he is grumbling still, for I always thought that he had smarted too much for Libelling on Ministers of State and Male-Administrations, to venture again; but when a Priest meddles with Law, he is like an Apothecary at Politicks, he generally runs himself into a Nooze, for he'll never leave off till he's advanced one way or another. To conclude, the design of the Sheet was to justify the Prerogative of the King and Queen, and the Rights of their Crown, and the Republican is angry, that either should have any, and from thence flames the Passion; nay, rather than it should be allowed, they'll attempt another Change, from which good Lord deliver us.

Prov. 28. 2.

During the composition of the Premises, News was brought me that another Pen had been procured to attack the Vindication, viz. The Author that runs a muck at all Mankind, except his own Patroons: A deserved and full remark upon so voluminous a Book, is not here to be expected, however, this Appendix may serve for an Advertisement to the World, that the new Repliant is in several particulars obliged to Solicitor Coke, and the other Regicides defence on their Tryals for much of his Materials; time is wanting to shew the Parallel, at present 'tis fit to be observed, that his blind side also is apparent, and consequently capable of a sufficient Answer, and to give my Reader a Specimen thereof. I'll take notice of a few (amongst many) Mistakes both in Fact and Law, which he hath wilfully committed; In the first Page he says, That to justify what hath been taken ill, accuses the present Government of Injustice; which is false. In Page 2. he says, That the Vindication ventures on a Point of Law which it pretends is the result of the Evidence given; there's no such pretence in the whole Paper, the only Debate was upon the Indictment: He says in the same Page, that it's said his Relations were pleased with the justness of the Tryal; it only says, His Relations were pleased, and his Enemies angry with those who then sat upon the Bench, and that's true; for some of his Relations cannot deny it, the Fact is so well known: The last line of Page 3. and first of the next are also false; for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is just like his wonted positiveness in his Remarks; where for instance he says, That one of the Judgments he cavils at was the first that was ever given without Argument or Reasons delivered in Court, which is also false; for in Plowden's Comment. 459. In Sir Tho. Wrot's Case, the Author takes expost notice, that the reasons of the Judgment were not disclosed when the same was pronounced; and Fifty other Cases I could name him of the same, but one Instance is enoughe to falsifie a general indefinite Position, tho there are several more even in that very Book.

But to run over his Volume, Pag 2. is only a farther scurrilous Reflection to vindicate his own Remarks, and an impertinent bombast of words on the Phrase of English proceedings: The 3. P. assigns four Reasons of Printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his Story is foolish like — In the 4. P. he boulsters up himself in his Railing, by resorting to his refuge of the Parliaments Authority that reversed the Judgment, which all Men agree to be just, but it was not because the Recorder did not arrest the Judgment on that trivial Exception to the Indictment, but because the Prosecution was supposed malicious, and the Evidence supposed false or deficient, or both.

The 5, 6, 7, 8, 9, and 10th. Pages are all impertinent to the Point in question, and contain nothing but a Vindication of his justly condemned Clamour in his former Book; concerning which, I'll boldly say it, in seventeen Points of twenty he is out in his Law; if 'twere convenient to publish the proof on't, I could make it plain. His design is to shew in those Pages his Wit and Fancy, more than Candor or Law; for my part, I am of his Friends mind that he comes not short of the old Observator for managing a Dialogue:

But

But all this is not to the purpose, he is not come at it yet, he 22. page favours of the same Kidney, the 13. and 14. are no better : there he vents his Gall, and that in Ribaldry ; no softer a name than Tools can be afforded to Men of Worth and Honor : if himself be one, as some suppose him, I am sure it is not to the present Government, for he plainly condemns it, and declares the People, i. e., his sort of them, unsatisfied with it, for its sparingness in vengeance, and it is because others are not punished for maintaining the Law, and themselves not preferred for Arraigning it; some Men know my meaning. He says he is only for mumbling of Judges and Counsel, *Causa patet.*

But I must tell him two things. 1. The Inclinations of Englishmen, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His supposed Criminals do not depend on their Number, but the Law, which ought, and will justify them; if it doth not please, let it be changed by Parliament, or if the Author thinks that a tedious way, let us burn all our Law Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reason, and himself the greatest and only Lawyer in the Realm ; but till then, he must give others leave to know, and to say that they know, he is mistaken : for Resolutions, and Opinions, pursuant, and agreeable to the Opinions, and Rules of former Ages, I mean frequent and repeated Presidents, approved by the Lawyers of the Age that used them. I say these will be Law to the end of the World, unless altered by new Statutes.

And now we are come to debate the Question, all that is past is upon the Times, and not the Point. In page 18. is his Reasoning part, which is no more than was said before in, &c. To redargue him I must repeat ; if therefore he will observe what is said by the Sheet pag 22. I will say no more on't, but submit to the Judgment of the Reader, he says the inferences are Ridiculous, I say they are Rational and Genuine : the single Issue is, if his, or my friends Arguments are the most Logical and Natural, let the Reader judg.

Now for Authority, Let us see if he urges any on his side, or answers that on the other. He admires (pag. 24.) at the assurance of the Sheet Author, and others admire at his. He says the Parliament had often adjudged it, but none can shew any Judgment in the House of Lords, or Vote of the Commons House to that purpose. I have shewn the Sense of the present Parliament in the Point of Guards, and his temporary Laws are already answered ; nor would any Man but he, and one more, pretend that they are Judgments in the Case. Surely it will not be pretended that his Case of the Earl of Northumberlands in Hen. 4. time, is any thing to the purpose : Nor is it any Argument to say, no King of England was ever killed for want of Guards.

Now for Cases page 26. He saith that in the Earl of

Fix's Case there was an actual War Levyed, and that as I said before, destroys the Argument from the different sorts of Treason. As to *Cardinal Pool's* Case, he only says there was another Statute in force then, but no Record or History says that he was indicted on any other than the 25. *Edw. 3.* As to *Dr. Story's* Case, he tells a long Tale out of *Camden* about the Fact, but answers not one word to the Indictment, whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His answer to *Coleman's* Case is that, that things hapning afterwards proved more, but the Evidence was no more than what my Friend alledges. As to *Sir Henry Vane's* Case, his answer is, his own hearsay of what was proved, but the Judgment he never perused, argued like a Lawyer. As to *Constable's* Case and the rest, he gives no answer, but only that a repetition of a number of Cases makes a mutter and a noise, and so it does when they Govern and Rule the matter in question, and are not answered. *Owen's* Case he says the Author presses it strangely and that is all. He says the Cases of *Burton*, Duke of *Norfolk*, *Awater*, *Hibert*, and *cobage*, are not to the purpose, let the Reader judg if they are not pertinent : As to the Opinion of the Judges in the *Lord Stafford's* Case, he doth not mention it, but says the reviving that Case might have been spared, and that is all, a pretty answer ; as to *Colleg'd's* Case, he talks of a proof of a self Defence, but nothing to the Point it was urged for. As to the Cases of *Lord Cobham*, *Gray*, and *Rawleigh*, In 32, 33, 34, 35. pag. Setting aside his scandalous Investigations and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, viz. that the Charge was the same as in the Case in Dispute.

Now do I appeal to any Man of Sense and Reason that will Read and Think closely, if the *Repliant* hath offered any one Argument more than the *Lord Russel's* Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught. If he hath given any answer to *Dr. Story's*, *Collingborn's*, *Sir William Afton's*, *Burdet's*, and *Sir Henry Vane's* Indictment, in short if he hath answered any two of the Cases cited : or if he hath done any thing but reflect on past and late times, and if the Indictment remain not good both for matter and form, notwithstanding all these pretended Replies. Upon the whole mater, I desire the Reader to peruse the Books cited, and to judg if there be not presidents enough unanswered to justify the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its truth ; *quod fuit Probandum.*

To conclude, Since the *Repliant* is in love with *Horace*, I would advise him to consider one hint of his

— *Forum, putealque Libonis*
Mandabo scis. — Hor.